IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

MONDAY, THE 4TH JUNE 2007 / 14TH JYAISHTA 1929

WA.No. 813 of 2007()

AGAINST THE JUDGEMENT IN WPC.9172/2007 Dated 19/03/2007
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APPELLANT: PETITIONER IN WP(C)9172/07

M.RAJESWARI, FORMER PARTNER
M/S. SURYA CONSTRUCTIONS,(A DISSOLVED FIRM),
49/273,LAYAM ROAD, ERNAKULAM.

BY ADV. SRI.V.V.SIDHARTHAN

RESPONDENTS: RESPONDENTS IN WP(C)9172/07
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1. STATE OF KERALA, REPRESENTED BY ITS
SECRETARY TO GOVERNMENT
DEPARTMENT OF REVENUE, THIRUVANANTHAPURAM.

2. THE TAHSILDAR, KANAYANNUR TALUK,
ERNAKULAM DISTRICT, KOCHI-11.

3. THE VILLAGE OFFICER,
ERNAKULAM VILLAGE, ERNAKULAM.

BY SPL. G.P. (TAXES) SRI V.V.ASHOKAN

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD
ON 04/06/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

H.L.Dattu, C.J. & K.T.Sankaran, J.

W.A.No.813 of 2007

Dated, this the 4th day of June, 2007

JUDGMENT

H.L.Dattu, C.J.

In this writ appeal the appellant is calling in question the orders passed by the learned Single Judge in W.P.(C) No.9172 of 2007 dated 19.3.2007. By the impugned order the learned Single Judge has rejected the writ petition on the ground that the petitioner has an alternate remedy by way of appeal.

2. Before us, the learned counsel appearing for the appellant would contend that the 2nd respondent viz. Tahsildar, Kanayannur Taluk, had issued a notice proposing to bring to tax the apartment owned by the appellant and notice was issued proposing to levy building tax under the provisions of the Kerala building Tax Act, 1975.

3. It is the case of the appellant that she had filed detailed objections, inter alia, bringing to the notice of the 1st respondent that she is in no way responsible for payment of the building tax under the Act. It is the further case before this Court that the Tahsildar without considering those objections has proceeded to pass the impugned order.

4. The purpose of issuing a notice and consideration of the objections filed to the said notice has been explained by various High Courts including the apex Court. In the present case, a proposal is made by the Tahsildar to levy building tax under the Act. The said proposal is opposed by filing detailed objections. It was expected of the 2nd respondent to have considered those objections and to have passed an appropriate order. Without doing so, in the present case, he has proceeded to complete the assessment and also has issued a demand notice against the appellant. This action of

the 2nd respondent, in our opinion, is in violation of the principles of natural justice.

5. Therefore, the impugned order passed by the 2nd respondent Tahsildar requires to be set aside and the matter requires to be remanded to the 2nd respondent for fresh disposal in accordance with law.

6. The learned Single Judge without noticing the aforesaid aspect of the matter has merely relegated the appellant to file appeal as provided under the Act. The findings and conclusions reached by the learned Single Judge, in our opinion, cannot be justified. Therefore, the order passed by the learned Single Judge also requires to be set aside by us.

In the result, the following:

Order

i) The writ appeal is allowed.

ii) The order passed by the learned Single Judge in W.P.(C) No.9172 of 2007 is set aside.

iii) The orders passed by the 2nd respondent Tahsildar is also set aside and the matter is remitted back to the 2nd respondent Tahsildar for fresh consideration and to pass appropriate orders in accordance with law and, if it is possible and permissible, after giving. an opportunity of being heard to the assessee/appellant.

Ordered accordingly.

(**H.L.Dattu)**
Chief Justice

(K.T.Sankaran)
Judge

mt/-